

FUNERAL SERVICES LICENSING ACT

Part 1. General Provisions

58-9-101. Title.

This chapter is known as the "Funeral Services Licensing Act."

58-9-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Beneficiary" means the individual who, at the time of the beneficiary's death, is to receive the benefit of the property and services purchased under a preneed funeral arrangement.
- (2) "Board" means the Board of Funeral Service created in Section 58-9-201.
- (3) "Buyer" means a person who purchases a preneed funeral arrangement.
- (4) "Calcination" means a process in which a dead human body is reduced by intense heat to a residue that is not as substantive as the residue that follows cremation.
- (5) "Cremation" means the reduction of a dead human body by direct flame to residue that includes bone fragments.
- (6) "Direct disposition" means the disposition of a dead human body:
 - (a) as quickly as law allows;
 - (b) without preparation of the body by embalming; and
 - (c) without an attendant funeral service or graveside service.
- (7) "Disposition" means the final disposal of a dead human body by:
 - (a) earth interment;
 - (b) above ground burial;
 - (c) cremation;
 - (d) calcination;
 - (e) burial at sea;
 - (f) delivery to a medical institution; or
 - (g) other lawful means.
- (8) "Embalming" means replacing body fluids in a dead human body with preserving and disinfecting chemicals.
- (9)
 - (a) "Funeral merchandise" means any of the following into which a dead human body is placed in connection with the transportation or disposition of the body:
 - (i) a vault;
 - (ii) a casket; or
 - (iii) other personal property.
 - (b) "Funeral merchandise" does not include:
 - (i) a mausoleum crypt;
 - (ii) an interment receptacle preset in a cemetery; or
 - (iii) a columbarium niche.
- (10) "Funeral service" means a service, rite, or ceremony performed:
 - (a) with respect to the death of a human; and
 - (b) with the body of the deceased present.
- (11) "Funeral service director" means an individual licensed under this chapter who may engage in all lawful professional activities regulated and defined under the practice of funeral service.
- (12)
 - (a) "Funeral service establishment" means a place of business at a specific street address or location licensed under this chapter that is devoted to:
 - (i) the embalming, care, custody, shelter, preparation for burial, and final disposition of dead human bodies; and
 - (ii) the furnishing of services, merchandise, and products purchased from the establishment as a preneed provider under a preneed funeral arrangement.
 - (b) "Funeral service establishment" includes:

- (i) all portions of the business premises and all tools, instruments, and supplies used in the preparation and embalming of dead human bodies for burial, cremation, and final disposition as defined by division rule; and
 - (ii) a facility used by the business in which funeral services may be conducted.
- (13) "Funeral service intern" means an individual licensed under this chapter who is permitted to:
 - (a) assist a funeral service director in the embalming or other preparation of a dead human body for disposition;
 - (b) assist a funeral service director in the cremation, calcination, or pulverization of a dead human body or its remains; and
 - (c) perform other funeral service activities under the supervision of a funeral service director.
- (14) "Graveside service" means a funeral service held at the location of disposition.
- (15) "Memorial service" means a service, rite, or ceremony performed:
 - (a) with respect to the death of a human; and
 - (b) without the body of the deceased present.
- (16) "Practice of funeral service" means:
 - (a) supervising the receipt of custody and transportation of a dead human body to prepare the body for:
 - (i) disposition; or
 - (ii) shipment to another location;
 - (b) entering into a contract with a person to provide professional services regulated under this chapter;
 - (c) embalming or otherwise preparing a dead human body for disposition;
 - (d) supervising the arrangement or conduct of:
 - (i) a funeral service;
 - (ii) a graveside service; or
 - (iii) a memorial service;
 - (e) cremation, calcination, or pulverization of a dead human body or the body's remains;
 - (f) supervising the arrangement of:
 - (i) a disposition; or
 - (ii) a direct disposition;
 - (g) facilitating:
 - (i) a disposition; or
 - (ii) a direct disposition;
 - (h) supervising the sale of funeral merchandise by a funeral establishment;
 - (i) managing or otherwise being responsible for the practice of funeral service in a licensed funeral service establishment;
 - (j) supervising the sale of a preneed funeral arrangement; and
 - (k) contracting with or employing individuals to sell a preneed funeral arrangement.
- (17) (a) "Preneed funeral arrangement" means a written or oral agreement sold in advance of the death of the beneficiary under which a person agrees with a buyer to provide at the death of the beneficiary any of the following as are typically provided in connection with a disposition:
 - (i) goods;
 - (ii) services, including:
 - (A) embalming services; and
 - (B) funeral directing services;
 - (iii) real property; or
 - (iv) personal property, including:
 - (A) a casket;
 - (B) another primary container;
 - (C) a cremation or transportation container;
 - (D) an outer burial container;
 - (E) a vault;

- (F) a grave liner;
 - (G) funeral clothing and accessories;
 - (H) a monument;
 - (I) a grave marker; and
 - (J) a cremation urn.
- (b) "Preneed funeral arrangement" does not include a policy or product of life insurance providing a death benefit cash payment upon the death of the beneficiary which is not limited to providing the products or services described in Subsection (17) (a) .
- (18) "Pulverization" means a grinding process that reduces the residue of a cremation or calcination into a powdery substance.
- (19) "Sales agent" means an individual licensed under this chapter as a preneed funeral arrangement sales agent.
- (20) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-9-501.
- (21) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-9-502

Part 2. Board

58-9-201. Board.

- (1) There is created the Board of Funeral Service consisting of:
 - (a) four funeral service directors who own, have an ownership interest in, or have management responsibilities for a funeral service establishment;
 - (b) one preneed funeral arrangement sales agent, who does not have an ownership interest in a funeral service establishment; and
 - (c) two members from the general public who have no association with the funeral service profession.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201 .
- (3)
 - (a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
 - (b) The board shall designate one of its members on a permanent or rotating basis to:
 - (i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
 - (ii) advise the division in its investigation of these complaints.
- (4) A board member who has, under Subsection (3), reviewed a complaint or advised the division in its investigation may be disqualified from participating with the board when the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Part 3. Licensing

58-9-301. Licensure required - License classifications.

- (1) A license is required to engage in the practice of funeral service, except as specifically provided in Sections 58-1-307 and 58-9-305.
- (2) The division shall issue to a person who qualifies under this chapter a license in the classification of:
 - (a) funeral service director;
 - (b) funeral service intern;
 - (c) funeral service establishment; or
 - (d) preneed funeral arrangement sales agent.

58-9-302. Qualifications for licensure.

- (1) Each applicant for licensure as a funeral service director shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee as determined by the department under Section 63-38-3.2 ;
 - (c) be of good moral character in that the applicant has not been convicted of:

- (i) a first or second degree felony;
 - (ii) a misdemeanor involving moral turpitude; or
 - (iii) any other crime that when considered with the duties and responsibilities of a funeral service director is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;
 - (d) have obtained a high school diploma or its equivalent or a higher education degree;
 - (e) have obtained an associate degree, or its equivalent, in mortuary science from a school of funeral service accredited by the American Board of Funeral Service Education or other accrediting body recognized by the U.S. Department of Education;
 - (f) have completed not less than 2,000 hours and 50 embalmings, over a period of not less than one year, of satisfactory performance in training as a licensed funeral service intern under the supervision of a licensed funeral service director; and
 - (g) obtain a passing score on examinations approved by the division in collaboration with the board.
- (2) Each applicant for licensure as a funeral service intern shall:
- (a) submit an application in a form prescribed by the division;
 - (b) pay a fee as determined by the department under Section 63-38-3.2 ;
 - (c) be of good moral character in that the applicant has not been convicted of:
 - (i) a first or second degree felony;
 - (ii) a misdemeanor involving moral turpitude; or
 - (iii) any other crime that when considered with the duties and responsibilities of a funeral service intern is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;
 - (d) have obtained a high school diploma or its equivalent or a higher education degree; and
 - (e) obtain a passing score on an examination approved by the division in collaboration with the board.
- (3) Each applicant for licensure as a funeral service establishment and each funeral service establishment licensee shall:
- (a) submit an application in a form prescribed by the division;
 - (b) pay a fee as determined by the department under Section 63-38-3.2;
 - (c) have in place:
 - (i) an embalming room for preparing dead human bodies for burial or final disposition, which may serve one or more facilities operated by the applicant;
 - (ii) a refrigeration room that maintains a temperature of not more than 40 degrees fahrenheit for preserving dead human bodies prior to burial or final disposition, which may serve one or more facilities operated by the applicant; and
 - (iii) maintain at all times a licensed funeral service director who is responsible for the day-to-day operation of the funeral service establishment and who is personally available to perform the services for which the license is required;
 - (d) affiliate with a licensed preneed funeral arrangement sales agent or funeral service director if the funeral service establishment sells preneed funeral arrangements;
 - (e) file with the completed application a copy of each form of contract or agreement the applicant will use in the sale of preneed funeral arrangements; and
 - (f) provide evidence of appropriate licensure with the Insurance Department if the applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or in part by an insurance policy or product to be sold by the provider or the provider's sales agent.
- (4) Each applicant for licensure as a preneed funeral arrangement sales agent

shall:

- (a) submit an application in a form prescribed by the division;
- (b) pay a fee as determined by the department under Section 63-38-3.2;
- (c) be of good moral character in that the applicant has not been convicted of:
 - (i) a first or second degree felony;
 - (ii) a misdemeanor involving moral turpitude; or
 - (iii) any other crime that when considered with the duties and responsibilities of a preneed funeral sales agent is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;
- (d) have obtained a high school diploma or its equivalent or a higher education degree;
- (e) have obtained a passing score on an examination approved by the division in collaboration with the board;
- (f) affiliate with a licensed funeral service establishment; and
- (g) provide evidence of appropriate licensure with the Insurance Department if the applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or in part by an insurance policy or product.

58-9-303. Term of license - Expiration - Renewal.

- (1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule.
- (1) (b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
- (2) Notwithstanding Subsection (1), a person who has once held a license as a funeral service intern and has not qualified for licensure as a funeral service director may be issued a subsequent funeral service intern license for only one additional two-year term upon the specific approval of the division in collaboration with the board.
- (3) At the time of renewal, the funeral service director licensee shall show satisfactory evidence of completion of continuing education as required under Section 58-9-304.
- (4) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.
- (5) (a) Except as otherwise provided in Subsections (5) (b) and (c), the division may take action against the license of a funeral service establishment that does not have a licensed funeral service director.
- (5) (b) If a licensed funeral service director dies and leaves the funeral service establishment as part of the assets of the funeral service director's estate:
 - (i) the personal representative of the funeral service director's estate may operate the funeral service establishment under the license, or renewals of the license, for not more than two years from the date of the funeral service director's death without meeting the qualifications of an applicant and without having a licensed funeral service director; but
 - (ii) Subsection (5) (b) (i) does not allow an unlicensed person to perform a function that requires performance by a funeral service director licensed under this chapter.
- (5) (c) If the funeral service director of a licensed funeral service establishment terminates employment with the establishment, the establishment has 90 days to hire a new licensed funeral service director before action may be taken against the license under Subsection (5) (a).

58-9-304. Continuing education.

- (1) As a condition precedent for license renewal, each funeral service director shall, during each two-year licensure cycle or other cycle defined by rule, complete 20 hours of qualified continuing professional education in accordance with standards defined by rule.
- (2) If a renewal cycle is extended or shortened under Section 58-9-303 , the continuing education hours required for license renewal under this section shall be increased or decreased proportionally.

58-9-305. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307 , a person may engage in the following acts included within the definition of the practice of funeral service, subject to the stated circumstances and limitations, without being licensed under this chapter:

- (1) transportation of a dead human body in accordance with other applicable state and federal laws;
- (2) ambulance or other emergency transportation of a dead human body;
- (3) the sale of any of the following that is delivered to the buyer or the buyer's designee within 90 days after the day of the sale:
 - (a) funeral merchandise;
 - (b) headstones; or
 - (c) other memorial merchandise;
- (4) the performance of funeral, graveside, or memorial services by:
 - (a) a member of the clergy;
 - (b) a member of the decedent's family; or
 - (c) any other recognized individual;
- (5) assisting a Utah licensed funeral service director regarding disasters or special emergencies by individuals licensed in other states as funeral service directors or embalmers;
- (6) activities of an unlicensed individual employed by a funeral service establishment involving arrangement for a funeral service or the sale of funeral merchandise if the binding contract is reviewed, approved, and signed in behalf of the funeral service establishment by a licensed funeral service director; and
- (7) nonprofessional tasks or activities which:
 - (a) do not require independent professional judgment; and
 - (b) are required of persons employed by a funeral service establishment under the supervision of a funeral service director.

58-9-306. License by endorsement.

The division may issue a license by endorsement under this chapter to a person who

- (1) provides documentation that the funeral service director's current licensure is active, in good standing, and free from any disciplinary action;
- (2) submit an application on a form provided by the division;
- (3) pays a fee determined by the department;
- (4) is of good moral character in that the person has not been convicted of:
 - (a) a first or second degree felony;
 - (b) a misdemeanor involving moral turpitude; or
 - (c) any other crime that when considered with the duties and responsibilities of the license for which the person is applying is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;
- (5) has completed five years of lawful and active practice as a licensed funeral service director and embalmer within the ten years immediately preceding the application for licensure by endorsement;
- (6) has passed a national examination determined by the division; and
- (7) has demonstrated competency of the laws and the rules of the state as determined by the division.

58-9-307. Supervision of funeral service intern.

- (1) A person seeking licensure as a funeral service intern shall submit as a part of the application for a license:
 - (a) the name of the licensed funeral service director who has agreed to supervise all duties performed by the applicant as an intern; and
 - (b) the name of the licensed funeral service establishment at which the training and supervision shall take place.
- (2) A licensed funeral service director may supervise only one licensed funeral service intern at one time.
- (3)
 - (a) Within 30 days after the day on which the supervisor-supervisee relationship between a licensed funeral service director and a licensed funeral service intern terminates, the funeral service director shall furnish to the division a report of the performance of the funeral service intern.
 - (b) The report shall be in form and content as prescribed by the division.
- (4)
 - (a) A licensed funeral service intern shall notify the division of any change in the intern's supervising funeral service director.
 - (b) The supervising funeral service director shall submit to the division, in accordance with Subsection (3), a report of the funeral service intern's performance.
- (5) The licensed funeral service director is responsible for supervision of all of the duties and functions performed by the funeral service intern throughout the entire internship period.

Part 4. License Denial and Discipline

58-9-401. Grounds for denial of license - Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Part 5. Unlawful and Unprofessional Conduct - Penalties

58-9-501. Unlawful conduct.

"Unlawful conduct" includes:

- (1) doing any of the following to prepare a dead human body for disposition unless licensed as a funeral service director or a funeral service intern:
 - (a) embalming;
 - (b) calcinating;
 - (c) pulverizing;
 - (d) cremating; or
 - (e) using any method that invades a dead human body;
- (2) using the title "funeral service director," "funeral service intern," "preneed funeral service sales agent," or "funeral service establishment" unless licensed under this chapter;
- (3) engaging in, providing, or agreeing to provide funeral arrangements to be provided under a preneed funeral arrangement without first obtaining a license as a funeral service establishment under this chapter;
- (4) engaging in selling, representing for sale, or in any other way offering to sell any contract under which preneed funeral arrangements are to be provided without first obtaining a license under this chapter as:
 - (a) a preneed funeral arrangement sales agent; or
 - (b) a funeral service director; and
- (5) failing to comply with Section 58-9-702.

58-9-502. Unprofessional conduct.

- (1) "Unprofessional conduct" includes:
 - (a) the failure of a funeral service director to accurately document, report, and supervise the activities of a funeral service intern;
 - (b) knowingly soliciting the sale of any funeral service or funeral merchandise for a person whose death occurred or was imminent prior to the solicitation;
 - (c) paying or offering to pay a commission or anything of value to secure deceased human remains for a funeral service or disposition to:
 - (i) medical personnel;
 - (ii) a nursing home;
 - (iii) a nursing home employee;
 - (iv) a hospice;
 - (v) a hospice employee;
 - (vi) clergy;
 - (vii) a government official; or
 - (viii) any other third party; and
 - (d) failure to provide the following current information to the division:
 - (i) a licensee's business address;
 - (ii) a licensee's primary residence;
 - (iii) a funeral service establishment's funeral service director; or
 - (iv) a supervising funeral service director's funeral service intern's name.
- (2) "Unprofessional conduct" does not include:
 - (a) general advertising directed to the public at large; or
 - (b) responding to a notification of death from:
 - (i) medical personnel;
 - (ii) a nursing home;
 - (iii) a nursing home employee;
 - (iv) a hospice;
 - (v) a hospice employee;
 - (vi) clergy;
 - (vii) a government official; or
 - (viii) any authorized representative of the family of the deceased person.

58-9-503. Penalty for unlawful conduct.

- (1) A person who violates the unlawful conduct provisions defined in Subsections 58-9-501(1) through (4) is guilty of a class A misdemeanor.
- (2) A person who violates the unlawful conduct provision defined in Subsection 58-9-501(5) may be prosecuted under Title 76, Chapter 6, Part 4, Theft.

58-9-504. Authority to promulgate rules.

In addition to the authority granted under Section 58-1-106, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division in collaboration with the board shall establish by rule:

- (1) the minimum requirements for a licensed funeral establishment for the following:
 - (a) physical facilities;
 - (b) equipment;
 - (c) instruments; and
 - (d) supplies;
- (2) license cycles under Section 58-9-303;
- (3) standards to protect the interests of buyers and potential buyers of preneed funeral arrangements under Section 58-9-701; and
- (4) standards for preneed funeral arrangement trusts.

58-9-505. Disclosure requirements.

A licensee under this chapter shall disclose information in accordance with regulations of the Federal Trade Commission and rules adopted by the division pursuant to this chapter.

58-9-506. Inspection - Right to access.

A licensed funeral service establishment is subject to inspection during normal business hours to determine compliance with the laws of Utah by:

- (1) any authorized representative of the division; or
- (2) any authorized representative of a local or state health department.

Part 6. Control of Disposition

58-9-601. Advance directions.

- (1) A person may provide written directions meeting the requirements of Subsection (2) to direct the preparation, type, and place of the person's disposition, including:
 - (a) designating a funeral service establishment;
 - (b) providing directions for burial arrangements; or
 - (c) providing directions for cremation arrangements.
- (2) The written directions described in Subsection (1) shall contain:
 - (a) the name and address of the decedent;
 - (b) written directions regarding the decedent's disposition;
 - (c) the signature of the decedent;
 - (d) the signatures of at least two unrelated individuals, each of whom signed within a reasonable time after witnessing the signing of the form by the decedent; and
 - (e) the date or dates the written directions were prepared and signed.
- (3) A funeral service director shall carry out the written directions of the decedent prepared under this section to the extent that:
 - (a) the directions are lawful; and
 - (b) the decedent has provided resources to carry out the directions.
- (4) Directions for disposition contained in a will shall be carried out pursuant to Subsection (3) regardless of:
 - (a) the validity of other aspects of the will; or
 - (b) the fact that the will may not be offered or admitted to probate until a later date.
- (5) A person may change or cancel written directions prepared under this section at anytime prior to the person's death by providing written notice to all applicable persons, including:
 - (a) if the written directions designate a funeral service establishment or funeral service director, the funeral service establishment or funeral service director designated in the written directions; and
 - (b) if the written directions are contained in a will, the personal representative as defined in Section 75-1-201.

58-9-602. Determination of control of disposition.

The right and duty to control the disposition of a deceased person, including the location, manner and conditions of the disposition, and arrangements for funeral goods and services to be provided vest in the following degrees of relationship in the order named, provided the person is at least 18 and is mentally competent:

- (1) a person designated in a written instrument, excluding a power of attorney that terminates at death under Sections 75-5-501 and 75-5-502, if the written instrument contains:
 - (a) the name and address of the decedent;

- (b) the name and address of the person designated under this Subsection (1);
- (c) directions that the person designated in this Subsection (1) is authorized to carry out the disposition of the decedent's remains;
- (d) the signature of the decedent;
- (e) the signatures of at least two unrelated individuals who are not the person designated under this Subsection (1), each of whom signed within a reasonable time after witnessing the signing of the form by the decedent; and
- (f) the date or dates the written instrument was prepared and signed;
- (2) the surviving, legally recognized spouse of the decedent;
- (3) (a) the sole surviving child of the decedent, or if there is more than one child of the decedent, the majority of the surviving children;
- (b) less than one-half of the surviving children are vested with the rights of this section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving children;
- (4) the surviving parent or parents of the decedent, and if one of the surviving parents is absent, the remaining parent is vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving parent;
- (5) (a) the surviving brother or sister of the decedent, or if there is more than one sibling of the decedent, the majority of the surviving siblings;
- (b) less than the majority of surviving siblings are vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving siblings;
- (6) the person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent, and if there is more than one person of the same degree, any person of that degree may exercise the right of disposition;
- (7) any public official charged with arranging the disposition of deceased persons;
- (8) in the absence of any person under Subsections (1) through (7), any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the personal representative of the decedent's estate or the funeral service director with the custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals referred to in Subsections (1) through (7).

58-9-603. Loss of right of disposition.

- (1) As used in this section, "estranged" means a physical and emotional separation from the decedent at the time of death which has existed for a period of time that clearly demonstrates an absence of affection, trust, and regard for the decedent.
- (2) A person who has a right of disposition under this chapter forfeits that right and the right is passed on the next qualifying person as listed in Section 58-9-602 under the following circumstances:
 - (a) the person is charged with a first or second degree murder or voluntary manslaughter in connection with the decedent's death, and the charges are known by the funeral service director, except that if the charges against the person are dropped or if the person is acquitted of the charges, the right of disposition is returned to the person;
 - (b) the person does not exercise the person's right of disposition within three days of notification of the decedent's death or within five days

- of the decedent's death, whichever is earlier; or
- (c) if a probate court under Section 58-9-605 determines that the person entitled to the right of disposition and the decedent were estranged at the time of death.

58-9-604. Control by funeral service director.

A funeral service director may control the disposition of the decedent and recover reasonable charges if:

- (1) (a) the funeral service director has actual knowledge that none of the persons described in Section 58-9-602 exist; or
- (b) after reasonable efforts the funeral service director is not able to contact any of the persons described in Section 58-9-602; and
- (2) the appropriate public official charged with arranging the disposition of deceased persons fails to assume responsibility for disposition of the decedent within 36 hours after receiving written notice from the funeral service director.

58-9-605. Disputes.

- (1) Notwithstanding Sections 58-9-601 through 58-9-604, the probate court for the county in which the decedent resided may:
 - (a) award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition; and
 - (b) make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree.
- (2) The following provisions apply to the probate court's determination under this section:
 - (a) if the persons holding the right of disposition are two or more persons with the same relationship to the decedent, and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of those persons or a funeral service director with custody of the remains may petition the probate court to make the decision;
 - (b) in making a determination the probate court shall consider:
 - (i) the reasonableness and practicality of the proposed funeral arrangements and disposition;
 - (ii) the degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;
 - (iii) the desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;
 - (iv) the convenience and needs of other families and friends wishing to pay their respects;
 - (v) the desires of the decedent; and
 - (vi) the degree to which the funeral arrangements would allow maximum participation by all who wish to pay their respects.
- (3) (a) In a dispute regarding the right of disposition, until the funeral service director receives a court order or other written agreement signed by the parties to the dispute that decides the final disposition of the remains, the funeral service director is not liable for refusing to:
 - (i) accept the decedent's remains;
 - (ii) inter or otherwise dispose of the decedent's remains; or
 - (iii) complete the arrangements for the final disposition of the decedent's remains.
- (b) If, during a dispute, a funeral service director retains a decedent's remains for final disposition, the director may:
 - (i) embalm or refrigerate and shelter the body, or both, to preserve

- it while awaiting the final decision of the probate court; and
 - (ii) add the costs incurred under Subsection (3)(b)(i) to the final disposition costs.
- (4) The legal fees and court costs incurred by a funeral service director for petitioning the probate court under Subsection (2)(a) may be added to the final disposition costs.
- (5)
 - (a) This section does not require or impose a duty upon a funeral service director to bring an action under Subsection (2)(a).
 - (b) A funeral service director may not be held criminally or civilly liable for failing to bring an action under Subsection (2)(a).
- (6) Except to the degree that it may be considered by the probate court under Subsection (2)(b)(iii), the fact that a person has paid for or agreed to pay for all or part of the decedent's funeral arrangements and final disposition does not give that person a higher priority to the right of disposition than the person would otherwise have.
- (7) The personal representative of the decedent's estate does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the personal representative would otherwise have.

58-9-606. Right to rely - Immunity.

- (1) A person signing a funeral service agreement, cremation authorization form, or other authorization for a decedent's disposition warrants the truthfulness of the facts set forth in the document, including the identity of the decedent and the person's authority to order the disposition.
- (2) A funeral service establishment has the right to rely on a contract or authorization executed under Subsection (1) and may carry out the instructions of the person whom its funeral service director reasonably believes holds the right of disposition.
- (3) A funeral service director incurs no civil or criminal liability for failure to contact or independently investigate the existence of any next-of-kin or relative of the decedent.
- (4) If there are at least two persons in the nearest class of the next-of-kin who are equal in priority and a funeral service director has no knowledge of an objection by other members of the class, the funeral service director may rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements.
- (5) A funeral service establishment or funeral service director who relies in good faith on the instructions of a person claiming the right of disposition under this part is immune from civil and criminal liability and disciplinary action in carrying out the disposition of a decedent's remains in accordance with that person's instructions.

Part 7. Preneed Funeral Arrangement Requirements

58-9-701. Preneed contract requirements.

- (1)
 - (a) Every preneed funeral arrangement sold in Utah shall be evidenced by a written contract.
 - (b) The funeral service establishment shall maintain a copy of the contract until five years after all of its obligations under the contract have been executed.
- (2) Each preneed contract form shall:
 - (a) be written in clear and understandable language printed in an easy-to-read type size and style;
 - (b) bear the preprinted name, address, telephone number, and license number of the funeral service establishment obligated to provide the services under the contract terms;
 - (c) be sequentially numbered by contract form;
 - (d) clearly identify that the contract is a guaranteed product contract;

- (e) provide that a trust is established in accordance with the provisions of Section 58-9-702;
 - (f) if the contract is funded by an insurance policy or product, provide that the insurance policy or product is filed with the Insurance Department and meets the requirements of Title 31A, Insurance Code; and
 - (g) conform to other standards created by rule under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to protect the interests of buyers and potential buyers.
- (3) A preneed contract shall provide for payment by the buyer in a form which may be liquidated by the funeral service establishment within 30 days after the day the funeral service establishment or sales agent receives the payment.
- (4) A preneed contract may not be revocable by the funeral service establishment except:
 - (a) in the event of nonpayment; and
 - (b) under terms and conditions clearly set forth in the contract.
- (5) (a) A preneed contract may not be revocable by the buyer or beneficiary except:
 - (i) in the event of:
 - (A) a substantial contract breach by the funeral service establishment; or
 - (B) substantial evidence that the funeral service establishment is or will be unable to provide the personal property or services to the beneficiary as provided under the contract; or
 - (ii) under terms and conditions clearly set forth in the contract.
- (b) The contract shall contain a clear statement of the manner in which payments made on the contract shall be refunded to the buyer or beneficiary upon revocation by the beneficiary.
- (6) (a) A preneed contract shall provide the buyer the option to require the funeral service establishment to furnish a written disclosure to a person who does not live at the same residence as the buyer.
- (b) The buyer may choose:
 - (i) a full disclosure containing a copy of the entire preneed contract;
 - (ii) a partial disclosure informing the recipient of:
 - (A) the existence of a preneed contract; and
 - (B) the name, address, telephone number, and license number of the funeral service establishment obligated to provide the services under the preneed contract; or
 - (iii) not to require the funeral service establishment to furnish a written disclosure to another person.

58-9-702. Payments to be held in trust - Trustee qualifications.

- (1) All money representing payments for the purchase of a preneed funeral arrangement shall be deposited by the provider or sales agent receiving the payment:
 - (a) within ten business days after the day on which the provider or sales agent receives the payment in the form of cash or cash equivalent; or
 - (b) within 35 calendar days after the day on which the provider or sales agent receives the payment in the form of a negotiable instrument.
- (2) All money received under Subsection (1) shall be placed in a trust account naming as trustee a Utah financial institution authorized to engage in the trust business under Title 7, Chapter 5, Trust Business.

58-9-703. Trust agreement.

- (1) Each trust established by a funeral service establishment shall be administered in accordance with a trust agreement conforming with:
 - (a) the requirements of this chapter;

- (b) rules adopted with respect to this chapter;
 - (c) the provisions of Title 75, Chapter 7, Utah Uniform Trust Code; and
 - (d) all other state and federal laws applicable to trusts and trust agreements.
- (2) Each trust agreement shall require that the funeral service establishment maintain a copy of the trust agreement until five years after all of its obligations under the trust agreement have been executed or transferred.
 - (3) Each trust agreement shall require that the trustee:
 - (a) separately account for each contract; and
 - (b) separately record payments with respect to each contract made into the corpus of the trust.
 - (4) Each trust agreement shall provide for distributions from the trust in accordance with the provisions of this chapter upon:
 - (a) the death of the beneficiary;
 - (b) revocation of the contract by the funeral service establishment upon nonpayment by the buyer; or
 - (c) revocation of the contract by the beneficiary or buyer.

58-9-704. Interest earned on trust funds.

Interest earned on trust funds shall be available for expenditure according to the following priority:

- (1) to pay the reasonable trustee expenses of administering the trust within a maximum amount established by rule;
- (2) to pay within a maximum amount established by rule under Section 58-9-504 the reasonable provider expenses associated with:
 - (a) the sale of the plan;
 - (b) administering the collection, remittance, and accounting of the amount of payments made into the corpus of the trust; and
 - (c) reporting required with respect to those contracts:
 - (i) that have been sold; and
 - (ii) under which the provider is obligated;
- (3) to pay the costs of providing any of the following for which the provider is obligated under a specific outstanding preneed funeral arrangement contract:
 - (a) personal property; and
 - (b) services at need; and
- (4) to pay the provider available funds left in the individual trust account after:
 - (a) all costs of providing personal property and services for which the provider is obligated under the contract underlying the trust; or
 - (b) (i) the contract is canceled as provided under this chapter; and
 - (ii) all amounts payable to the buyer, beneficiary, or any other person have been paid in full.

58-9-705. Distribution of funds.

- (1) Interest earned on trust funds shall be available to the provider according to the priority set forth in Section 58-9-704.
- (2) The amount of payments made into the corpus of the trust and any other amount which has been paid into the corpus of the trust shall be paid to the provider in the amount credited to a specific account upon the event of one of the following:
 - (a) the death of the beneficiary which shall be demonstrated to the trustee by the provider by furnishing to the trustee:
 - (i) a request for payment from the trust; and
 - (ii) a certified copy of the death certificate of the beneficiary; or
 - (b) revocation of the preneed funeral arrangement contract by either the provider or the buyer according to the terms and conditions of the contract, which shall be demonstrated to the trustee by the provider by furnishing to the trustee satisfactory evidence that:

- (i) the contract has been revoked; and
 - (ii) the provider has paid all funds due to the buyer or beneficiary.
- (3) After the provider completes all of the provider's obligations under the preneed funeral arrangement, the provider shall return all remaining funds under the preneed funeral arrangement to the estate of the beneficiary.
- (4) Upon an order of any court having jurisdiction, all amounts that have been paid into the corpus of the trust shall be paid to the buyer or beneficiary in the event of:
 - (a) a judgment to the benefit of a buyer or beneficiary upon a finding that:
 - (i) the provider is in substantial breach of the contract; or
 - (ii) there is substantial evidence that the provider is or will be unable to provide the personal property or services to the beneficiary under the contract;
 - (b) a judgment of bankruptcy against the provider; or
 - (c) any finding by the court that determines the funds should be rightfully returned to the buyer or beneficiary.

58-9-706. Trust funds and insurance reports.

- (1) (a) Each funeral service establishment shall maintain an annual report of preneed trust funds and insurance.
- (b) The report shall contain:
 - (i) the name of the trustees with which the funeral service establishment has trust funds on deposit; and
 - (ii) the amount remaining on deposit in the trust fund on:
 - (A) December 31 of the preceding year; or
 - (B) another annual reporting period as the division may establish.

58-9-707. Records of trustee - Contents.

- (1) The trustee shall keep an orderly record of all agreements.
- (2) The record shall contain:
 - (a) the name and address of the person making a payment;
 - (b) the date and the amount of each payment made;
 - (c) the date and amount of each withdrawal and to whom paid; and
 - (d) the name of the bank or trust company depository.

58-9-708. Audits.

- (1) (a) The division may at any time:
 - (i) audit records of the provider; and
 - (ii) inspect records of the provider.
- (b) The provider or trustee shall make available to the division for examination, inspection, or auditing all records pertaining to the accounts relating to:
 - (i) any contract sold under this chapter; and
 - (ii) any trust established under this chapter.
- (2) (a) The director may employ experts from outside the division if special need exists to perform examinations, inspections, and audits under this section.
- (b) The provider shall be responsible for payment to the division of all reasonable and necessary costs related to the employment of experts under this section.

FUNERAL SERVICES LICENSING ACT

Title 58, Chapter 9
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